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Government
Publications

Ontario. Securities commission
[General publications]
[G-3] Uniform act policies,
Alberta, British Columbia, Manitoba,
Saskatchewan and Ontario. 1971.



Ontario.

Securities Commission

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Government
Publications

SC
71451

UNIFORM ACT POLICY 62-01

"INDETERMINATE" - INTRA-PROVINCIAL DEBATES

General publications


6-37 UNIFORM ACT POLICIES

Alberta, British Columbia, Manitoba,
Saskatchewan and Ontario

Note:- While the references are specifically to the Ontario Securities Act sections, these policies are being applied under the substantially identical provisions of their Acts by the Commissions of Alberta, Manitoba and Saskatchewan and the Superintendent of Brokers for British Columbia.

April, 1971





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UNIFORM ACT POLICY #2-01

"UNDERTAKINGS"- EXTRA-PROVINCIAL COMPANIES

The Commission has directed the Director to refuse to issue a receipt for a prospectus until such time as the company proposing to distribute the equity shares to be offered by the prospectus has delivered undertakings satisfying the requirements of section 106 in Part X, section 117 in Part XI and section 132 in Part XII of The Securities Act, 1966 and the regulations made thereunder relating to proxies and proxy solicitation, insider trading reports and financial disclosure.

As the case may be, a new prospectus that complies with this Part shall be filed with the Commission and a receipt therefor obtained from the Director within twenty days from the expiration of the applicable twelve-month period or, subject to such terms and conditions as the Commission may require, within such greater number of days as it may permit."

If primary distribution is or continues more than twelve months from the relevant date it is first necessary that a new prospectus complying with the Act is not only submitted but a receipt issued for it within twenty days of the expiration of the applicable twelve-month period. To minimize the possibility of a break in primary distribution, the following procedure may be followed,

- (1) Material in the form of a preliminary prospectus under section 35 may be signed and submitted at least 30 days

UNIFORM ACT POLICY #2-02

PROSPECTUSES - ANNUAL RE-FILINGS

Section 56 of The Securities Act, 1966 states,

"Where primary distribution to the public of the security is in progress twelve months from,

- (a) the date of the issuance of the receipt for the preliminary prospectus relating to such security; or,
- (b) the date of the last prospectus relating to such security filed under this section,

as the case may be, a new prospectus that complies with this Part shall be filed with the Commission and a receipt therefor obtained from the Director within twenty days from the expiration of the applicable twelve-month period or, subject to such terms and conditions as the Commission may require, within such greater number of days as it may permit."

If primary distribution is to continue more than twelve months from the relevant date it is first necessary that a new prospectus complying with the Act is not only submitted but a receipt issued for it within twenty days of the expiration of the applicable twelve-month period. To minimize the possibility of a break in primary distribution, the following procedure may be followed,

- (1) Material in the form of a preliminary prospectus under section 35 may be signed and submitted at least 30 days

prior to the anniversary date of the prospectus. This will enable the Commission staff to review it and point up any deficiencies well before the anniversary date.

- (2) The signed annual re-filing should be received by the Commission, dated not later than the anniversary date.

UNIFORM ACT POLICY #2-03

PROSPECTUSES AND AMENDMENTS - CERTIFICATION
(SECTION 52) SUPPORTING DOCUMENTATION

For clarification it is essential that the supporting documents (which are required) include the names of all Directors present at the meeting which provided the authorization to the two signing Directors to sign a final prospectus on behalf of the Board of Directors.

UNIFORM ACT POLICY #2-04

CONSENT OF SOLICITORS -
DISCLOSURE OF INTEREST (SECTION 50)

The names of lawyers or legal firms frequently appear on the face page of prospectuses in two connections. Firstly, the underwriter and/or the company will name the lawyer upon whose advice he or it is relying. Secondly, the opinion of counsel that the securities may be purchased by insurance companies under The Canadian and British Insurance Companies Act or the Foreign Insurance Companies Act will be expressed.

In the first case the Commission is of the opinion that the solicitor, in the language of subsection 1 of section 50, is not named as having prepared or certified any part of the prospectus or is not named as having prepared or certified a report of valuation used in or in connection with a prospectus. This being so the written consent of the solicitor and the disclosure of interest required by subsections 1 and 4 would not be required.

In the second case, the opinion or similar reports are clearly prepared for the purpose of inclusion in the prospectus, section 50 applies and the consent and disclosure of interest is required.

UNIFORM ACT POLICY #2-05

APPLICATIONS UNDER SECTION 19(1)(8)(iii) OF
THE SECURITIES ACT BY A COMPANY WISHING
TO SELL ADDITIONAL SECURITIES TO ITS
SECURITY HOLDERS

Under the above section of The Securities Act, 1966 a company wishing to sell additional securities of its own issue to holders of its securities is required to give notice to the Commission of its intention. The Commission, in turn, is required within 10 days of receipt of the notice to notify the company if it objects to the sale. To assist the Commission in determining whether it should object to the sale the notice should be accompanied by the following information, which in turn the company will undertake to send to its security holders to whom the offer is being made:

- (1) The date of its last annual meeting.
(A copy of the minutes of that meeting should be furnished to the Commission for its information.)
- (2) A copy of its last annual report.
(This report need not be furnished to the security holders where it has already been forwarded to them.)
- (3) Any change in the directors, and officers of the company since the last annual meeting.
- (4) A statement signed by a senior officer of the company that there have been no material changes in the circumstances of the company since the date of the last audited financial statement delivered to the shareholders.
- (5) The latest audited financial statement.
(If it has already been forwarded to the securities holders to whom the offering is being made it need not be sent to them again.)

- (6) Particulars known to the directors of any transfer of shares which has materially affected the control of the company since the last meeting of shareholders, or alternatively a statement that no such particulars are known.
- (7) In addition to the information concerning the date, amount, nature and conditions of the proposed sale, including the approximate net proceeds to be derived by the company on the basis of such additional securities being fully taken up and paid for, required to be provided by section 19(1)8(iii) there should be a brief statement of the purposes for which the additional funds are required and, if a minimum amount is required to carry out that purpose the directors should state what in their opinion is the minimum amount required for that purpose. Where the offer is being made in another jurisdiction through a prospectus, a copy of the prospectus submitted for acceptance in that jurisdiction.
- (8) The length of time during which the offer will be open should be clearly specified together with the details of any payments to be made to any person or company in connection with the offering.
- (9) If a minimum amount has been specified as being necessary under (7) the offering is being made on an "best efforts" basis, the subscriptions shall be held in trust until that minimum amount is received. In the event that the minimum amount is not reached during the times specified in the offer the subscriptions will be returned to the subscribers

in full. An independent trustee should be named to administer these funds.

- (10) If the minimum amount is to be provided through a stand-by underwriting, the name and address of the underwriter must be specified. (The Commission must be furnished with evidence of the financial ability of the underwriter to meet the commitment.) Where the underwriting agreement contains a "market out" clause or similar provision this must be disclosed together with the arrangements made to assure that the subscriptions are returned to the subscribers in full in the event that the minimum amount required is not obtained. This would require the establishment of a trust as in (9) above.

Other Considerations

While each situation will be dealt with on its own facts generally speaking if the information stipulated above is furnished the Commission will not object to a sale by a company of additional securities of its own issue to the holders of its securities providing the company has been holding regular annual meetings, distributing the information required by the act incorporating it to its shareholders, and there has been no change in the management elected by the shareholders at the last annual meeting or change in effective control of a company.

In considering the length of time in which it is proposed to leave the offer open the Commission will consider whether the purpose of the offer requires a minimum amount to be raised or whether the funds are being sought for the general purposes

of the company. Where this is a minimum amount required the Commission will not consider unreasonable any offer left open for not more than 30 days. In the other cases the Commission will not consider as unreasonable any offer left open for not more than 90 days.

Where there is a stand-by underwriting, in reviewing its financial ability the fact that the underwriter is a registrant and subject to minimum capital requirements will be given favourable consideration.

The purpose of this policy is not to hamper offerings through this exemption. It will permit the Commission to ascertain whether the company has supplied adequate information to its security holders and to ascertain whether the terms and conditions of the offer are clearly stipulated. It is not the Commission's intention that this material be reviewed in the same stringent fashion as filings made under the prospectus requirements of the act.

UNIFORM ACT POLICY #2-06

USE OF SHAREHOLDERS' LISTS BY REGISTRANTS

Sections 163, 164 and 165 of The Business Corporations Act, 1970, restrict the use of a list of all or any of the shareholders of a corporation only for purposes connected with the corporation of which they are shareholders. The purposes connected with the corporation are defined and the use of a list of all or any of the shareholders for other purposes is constituted an offence punishable on summary conviction. The buying or selling or otherwise trafficking in such a list is also constituted an offence punishable on summary conviction. While similar conduct is not prohibited by the Canada Corporations Act, notwithstanding the Commission feels the same restrictions should apply insofar as the use of shareholders' lists by registrants is concerned.

Accordingly, the Commission hereby gives notice to all registrants that the use by a registrant of all or any part of a list of shareholders of any corporation for any purpose other than a purpose similar to that authorized in The Business Corporations Act (1970), and the buying and selling of or trafficking in such a list by a registrant will be considered by the Commission to be conduct contrary to the public interest and affecting his fitness for continued registration.

Although the corporation legislation of each jurisdiction varies the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan concur in the principle expressed.

UNIFORM ACT POLICY #2-07

SURRENDER OF REGISTRATION - OTHER THAN SALESMEN

Upon receipt of a notification that a registrant, other than a salesman wishes to terminate its or his registration by surrender, the Commission normally will suspend the registration as a matter of routine procedure pending receipt of satisfactory evidence that all obligations to its or his clients have been discharged. Upon receipt of such evidence the suspension may be removed and the registration shall thereupon be regarded as having been voluntarily terminated.

UNIFORM ACT POLICY #2-08

DECLARATION AS TO SHORT POSITION - LISTED AND
UNLISTED SECURITIES

Registrants and the public are reminded of the provisions of section 78 of The Securities Act, 1966, which are as follows:

"Any person or company who places an order for the sale of a security through an agent acting for him that is registered for trading in securities and,

- (a) at the time of placing the order, does not own the security; or
- (b) if acting as agent, knows his principal does not own the security,

shall, at the time of placing the order to sell, declare to his agent that he or his principal, as the case may be, does not own the security."

The declaration by the client that he (or his principal) does not then own the security (a short sale) must be made at the time the order to sell is given. This requirement applies equally to unlisted and listed securities. Where the client has not declared a "short sale", failure by him to make delivery of the securities within the normal time for delivery and in the absence of any reasonable explanation is prima facie an indication of a violation by the client of section 78. Contraventions of provisions of the Act are an offence and punishable on summary conviction under section 136.

THE HISTORY OF THE

REIGN OF HENRY THE SEVENTH
BY JOHN HALLAM

LONDON: PRINTED BY J. JOHNSON, ST. PAULS CHURCH-YARD, 1797.

IN TWO VOLUMES.
THE FIRST VOLUME.
CONTAINING THE HISTORY OF THE REIGN OF HENRY THE SEVENTH, FROM 1485 TO 1509.

THE SECOND VOLUME.
CONTAINING THE HISTORY OF THE REIGN OF HENRY THE SEVENTH, FROM 1485 TO 1509.

THE THIRD VOLUME.
CONTAINING THE HISTORY OF THE REIGN OF HENRY THE SEVENTH, FROM 1485 TO 1509.

THE FOURTH VOLUME.
CONTAINING THE HISTORY OF THE REIGN OF HENRY THE SEVENTH, FROM 1485 TO 1509.

THE FIFTH VOLUME.
CONTAINING THE HISTORY OF THE REIGN OF HENRY THE SEVENTH, FROM 1485 TO 1509.

THE SIXTH VOLUME.
CONTAINING THE HISTORY OF THE REIGN OF HENRY THE SEVENTH, FROM 1485 TO 1509.

Registrants are requested to record and maintain for inspection, a list of declared short sales of securities (listed or unlisted). Where the client fails to make delivery of the security sold within a reasonable time and offers no explanation for that failure, the facts should be forthwith reported to the Commission.

UNIFORM ACT POLICY #2-09

INSIDER TRADING REPORTS - LOAN AND TRUST COMPANIES

Notice is hereby given to insiders of Loan and Trust Companies that guaranteed deposit receipts or certificates of Trust Companies and deposit or savings accounts which are evidenced by a pass book, are not considered by the Commission to be capital securities for the purposes of insider trading reports.

UNIFORM ACT POLICY #2-10

INSIDER TRADING - PERSONS REQUIRED TO REPORT IN
MORE THAN ONE CAPACITY

Where an individual is an insider by virtue of being a director or senior officer of a principal company, and is also an insider by virtue of being a director or senior officer of a company that is itself an insider of that principal company he need only file one insider trading report. It is sufficient if he describes in the report the two or more capacities under which he is required to report.

UNIFORM ACT POLICY #2-11

POLICY STATEMENT IN CONNECTION WITH APPLICATIONS
TO THE COMMISSION FOR AN ORDER UNDER SECTION
121(3) OF THE SECURITIES ACT, 1966 (ONTARIO)
OR SECTION 173(3) OF THE BUSINESS CORPORATIONS
ACT, 1970 (ONTARIO)

Any applicant corporation applying under Section 173(3) of The Business Corporations Act, 1970 (Ontario) or Section 121(3) of The Securities Act, 1966 (Ontario) for an order permitting sales or gross operating revenue results to be omitted from the statement of profit and loss or the interim financial statement, as the case may be, should make such application prior to the end of the fiscal period for which such statement is to be drawn up unless the said applicant can show substantial reasons why application was not made as herein provided.

The purpose of this new policy is to ensure final disposition of the application prior to the date the company is required by the legislation to file the financial statements with the Commission.

UNIFORM ACT POLICY #2-12

TIMELY DISCLOSURE

The topic of timely disclosure of material information is one that is of great concern to all persons interested in securities, whether as investors, as executives or regulatory bodies. With the intention of providing some guidelines on this difficult subject the Commission, after discussion with the Toronto Stock Exchange, have prepared the following:

It is essential that all investors be placed on an equal footing insofar as knowledge of the material facts regarding the company which has securities in the hands of the public. Therefore, immediate disclosure of all material and significant information through news media is encouraged. Unfavourable facts must be disclosed as promptly, fully and plainly as favourable facts.

Disclosure should be made, of a proposal or proposed change when a decision accepting or recommending acceptance of such proposal or proposed change has been made, in other cases of material change when such change has occurred or when such change has been agreed upon by the relevant parties, notwithstanding that all the details may not have been documented.

Material changes or development include:

1. Actual or proposed changes in the control of the company;
2. Actual or proposed acquisition or disposition of material assets;
3. Proposed take-overs, mergers, consolidations, amalgamations or re-organizations;
4. Any material discoveries, changes or developments in the company's resources, technology, products or contracts, which would materially affect the earnings of the company upwards or downwards;

5. Proposed changes in capital structure, including stock splits or stock dividends;
6. Indicated changes in earnings upwards or downwards of more than recent average size and changes in dividends.
7. Any other material change in the affairs of the company which could reasonably be expected to affect materially the value of the security.

In this connection the Commission wishes to point out that under the 1968 amendments it has authority in the public interest to order that trading in a security cease and it also may deny the right to trade to individuals or companies. Either or both of these procedures may be evoked by the Commission if companies fail to make timely disclosure of material facts as indicated above, or if persons knowing such material information trade in the company's securities before the information has been made public.

It is noted that the Toronto Stock Exchange has a policy regarding "Timely Disclosure" substantially to the same effect as the above. Compliance with the requirements of the Exchange by companies whose securities are listed thereon will normally be viewed as compliance with the Commission's policy herein. Conversely, the failure by a company to comply with the requirements of the Exchange may result in the Commission considering the issuance of an order or orders in the public interest, as mentioned above.

The Commission recognizes that there may be cases where disclosure might occasion harm to the company which might outweigh any possible damage to the shareholder by withholding the information. Where this arises management should take every possible precaution to ensure that no trading whatsoever takes place by any insiders or

individuals who are associated with the company and who may be in possession of the confidential information.

The Commission realizes the difficulties that may arise in the implementation of this policy. The outlines set out above are guidelines. If management has an unusual or difficult situation confronting it, it may, if it so desires, discuss the matter with the Commission, or in the case of listed securities, with the Toronto Stock Exchange.*

*The discussions will be with the stock exchanges "recognized" by the particular province, subject to any "timely disclosure" policies these exchanges may have.

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